

November 24, 2004

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**Hearing Examiner's Recommendation to the City of Bellevue to Deny Appeals**

To: Matthew A. Terry, Director, City of Bellevue Department of Planning and Community  
Development Land Use Division

SUBJECT: Department of Development and Environmental Services File No. **B01L0105**

**JACKSON DUPLEX**  
Transfer of Density Credit Appeal

Location: 2211 West Lake Sammamish Parkway Southeast, Bellevue

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## SUMMARY OF RECOMMENDATIONS:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal
Examiner's Recommendation:	Deny appeal

## EXAMINER PROCEEDINGS:

Hearing Opened:	November 18, 2004
Hearing Closed:	November 18, 2004

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

## ISSUES/TOPICS ADDRESSED:

- Transfer of development credit pilot program;
- Receiving sites;
- Conditional use permit review criteria;
- Vesting of applications.

SUMMARY: The respondents' motion to dismiss the appeal at the close of the Appellants' case is GRANTED; and the appeals of the City of Bellevue's decision to permit a transfer of one development credit to allow construction of a two-unit residential development on the subject property are recommended to be DENIED.

## FINDINGS:

1. On July 29, 2004 the City of Bellevue, Department of Planning and Community Development Land Use Division, published its decision approving the transfer of 1 residential density credit for the proposed development of a two-unit residence on property located at 2211 West Lake Sammamish Parkway Southeast, Bellevue. This decision, with attachments consisting of the City Staff Review of King County's recommendation (6 pages, dated July 29, 2004) and the King County Department of Development and Environmental Services transfer of residential density credits report and decision (21 pages dated June 24, 2004) is exhibit no. 2 in the hearing record. The facts set forth in exhibit no. 2 are hereby adopted by the Examiner and incorporated herein as if fully set forth.
2. The property that is the subject of this application and appeal is within an area that was annexed to the City of Bellevue effective March 14, 2001. The subject application for development of this property with three residential dwelling units, utilizing two transfer of density credits, was submitted to King County on January 30, 2001, and was deemed complete by the Department of Development and Environmental Services on February 28, 2001. The proposal was reviewed by King County and the City of Bellevue pursuant to King County Code Chapter 21A.55 that was in effect on February 28, 2001.
3. On July 12, 2001 King County and the City of Bellevue entered into an interlocal agreement

relating to the processing of building permits and land use applications that were vested with King County before the effective date of the annexation that included this property. At the pre-hearing conference on this appeal, all parties agreed that the King County Hearing Examiner had jurisdiction to hear this appeal. Under the terms of the interlocal agreement, the Examiner's action constitutes a recommendation to the City of Bellevue, which has the sole authority to make all discretionary decisions on properties that are now within the City of Bellevue.

4. KCC 21A.55.140 provides that receiving sites for transfers of development credits include areas zoned R-4 through R-8. That section also provides, "C. Apartments and townhouse units are permitted outright in the R-4 through R-8 zones through the transfer of density credits provisions of this pilot project, subject to the review process described in KCC 21A.55.180."

21.55.180 provides that public notice for "Type 4" land use decisions shall be provided for parcels identified as receiving sites for a demonstration project. Section 21A.55.170 is the section of code that in fact set forth the applicable review process. Subsection A.4 of KCC 21A.55.170 provides that when the primary proposal does not require a public hearing, the TDC proposal shall be evaluated by the same decision criteria as used for conditional use permits.

5. The Appellants contend that the application submitted January 30, 2001, that was deemed complete by King County on February 28, 2001, should not have been considered complete or vested because:
  - (1) The initial application sought a permit for construction of 3 dwelling units, which was later revised to be the current application for 2 dwelling units; and
  - (2) The initial application indicated that the site area was 13,313 square feet, but the site is in fact only 13,008 square feet.

The Appellants also contends that the proposal does not meet the review criteria for a conditional use permit with respect to compatibility with the character and appearance of existing development in the vicinity, impact on views from adjacent properties, bulk, affect on soil stability on adjacent properties and failure to meet City of Bellevue setback requirements.

6. KCC 20.20.070 provides that the Department of Development and Environmental Services' issuance of a notice of complete application shall cause an application to be conclusively deemed to be vested. Subsection "B" provides, "Supplemental information required after the vesting of a complete application shall not affect the validity of the vesting for such application".

KCC 20.20.080 provides that:

- "A. Modifications required by the County to a pending application shall not be deemed a new application.
- "B. An applicant-requested modification shall be deemed a new application when such modification would result in a substantial change in the project's review process, as determined by the department."

The modification of the proposed development from a three unit to a two unit dwelling was required by King County. Even if the modification had been initiated by the Applicant, that

modification from three units to two units, and from the transfer of two TDCs to one TDC, did not result in a substantial change in the project's review requirements.

7. The preponderance of the evidence, after consideration of all the evidence presented by the Appellants, does not establish that the proposed development is incompatible with the character and appearance of existing development in the vicinity, that it would substantially impact views from adjacent properties, that it would affect soil stability on neighboring properties, or that it would be of a size or bulk incompatible with other development in the vicinity.

#### CONCLUSIONS:

1. The Examiner adopts and incorporates herein, as if fully set forth, the conclusions contained in the decision by the City of Bellevue (with attachments described in finding no. 1) that is exhibit no. 2 in the hearing record.
2. The Hearing Examiner has jurisdiction to hear this appeal and to make a recommendation to the City of Bellevue for its consideration in making the final decision on this appeal.
3. The subject application was a complete application when filed on January 30, 2001. The application was vested to King County Code provisions in effect on that date. Consequently, it was correct for King County DDES and the City of Bellevue to evaluate the proposal, as modified at the request of King County, pursuant to KCC Chapter 21A.55 that was then in effect.
4. The construction of a two unit residence on the subject property, notwithstanding the existence of single-family residences on adjacent and nearby properties, is addressed by King County Code section 21A.55.140.C., which permits townhouse units outright in the R-4 through R-8 rezone reclassifications through the transfer of density credit provisions of the code.
5. The review of the proposal by King County, and the decision by the City of Bellevue approving the application to utilize one transferable density credit, to enable construction of a two unit residential building on the subject property, were and are consistent with the criteria for the review of conditional use permits pursuant to KCC 21A.44.040.

#### RECOMMENDATION:

The appeals of Margo and Mark Allan, Kerry G. Zeida and John Carras should be DENIED.

RECOMMENDED this 24th day of November, 2004.

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James N. O'Connor  
King County Hearing Examiner *pro tem*

TRANSMITTED this 24th day of November, 2004, to the following parties and interested persons of record:

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MINUTES OF THE NOVEMBER 18, 2004, PUBLIC HEARING ON DEPARTMENT OF  
DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. B01L0105.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Dave Baugh, John Briggs, Todd Hurley, Brian Norton and Hou-Chin Chow, representing the Department; Margo Allan and Kerry Zeida, representing the Appellants, and Keith Dearborn, representing the Applicant.

The following exhibits were offered and entered into the record:

- Exhibit No. 1 Interlocal Agreement
- Exhibit No. 2 Decision document with attachments signed by Matthew Terry, City of Bellevue
- Exhibit No. 3 August 10, 2004 notice and statement of appeal signed on behalf of Margo & Mark Allan
- Exhibit No. 4 August 23, 2004 letter (appeal statement) signed by Kerry Zeida
- Exhibit No. 5 DDES files for case # B010105

JNOC:gao  
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